ABAS KELANG & ANOR

v.

TAN TENG KAI & ANOR

HIGH COURT MALAYA, JOHOR BAHRU
MOHD. YUSOF ABDUL RASHID J
[CIVIL SUIT NO. 32 OF 1976]
8 DECEMBER 1981

CIVIL PROCEDURE: *Damages for personal injuries arising from a motor accident - Defence pleads claim settled out of Court - Plaintiff's authority to previous solicitors - Solicitors compromised to settle claim out-of-Court - Whether authority should be expressed and specific - Plaintiffs refused to accept payment and sign discharge voucher - Whether solicitors' settlement with insurance company binding on plaintiffs.*

The plaintiffs sustained personal injuries as a result of the motor taxi No. JH 2747 in which they were travelling as fare-paying passengers came into collision with the motor car driven by the first defendant, the servant or agent of the second defendant on 2 April 1972.

In their statement of defence, the defendants pleaded that the plaintiffs' claim was without legal basis since their claims had been settled out of Court. When the action came up for hearing counsels for the plaintiffs and the defendants urged the Court to dispose of first the issue of whether or not there was a binding agreement relating to the settlement of the plaintiffs' claim out of Court before going into the claim proper. Counsel for the defendants intimated that the defendants admitted liability but there was only one other issue to be determined, namely, the question of quantum of damages.

Sometime in May 1972, the plaintiffs authorised a firm of advocates and solicitors (not the present solicitors on record) to act for them in the matter as their solicitors. The plaintiffs authorised their solicitors to pursue their claim to a successful conclusion with London and Pacific Insurance Company Sdn. Bhd. ("the Insurance company") and allowed the solicitors generally to arrange to obtain the most favourable sum as damages for the claim. Letters were exchanged between the solicitors for the plaintiffs and the solicitors for the Insurance company and a settlement was negotiated for RM1,500 and RM1,000 in satisfaction of the 1st and 2nd plaintiffs' claims respectively, together with RM500 as legal costs for their solicitors. Three cheques for these sums were sent to the plaintiffs' solicitors but the plaintiffs rejected the settlement proposed by the solicitors and refused to sign the "discharge vouchers" when summoned to call at their solicitors' office.

This case involves a question of a very significant nature affecting public policy, i.e. is a solicitor authorised in law to compromise a claim on behalf of a client with a third party, before Court action is brought in relation to such claim, by accepting a definite sum as compensation without first obtaining specific instruction from the client relating to the acceptance of the sum.

Held:

[1] The plaintiffs gave their solicitors a general authority to act for them in the matter. When the Insurance company had agreed to settle the claim by paying a sum of RM1,500 in favour of the 1st plaintiff and another RM1,000 in favour of the 2nd plaintiff, the solicitors did not seek the plaintiffs' assent. Consequently, there was no express and specific authority for the

plaintiffs' solicitors to settle the claim by way of compromise for a sum of RM1,500 and RM1,000 for the plaintiffs. The solicitors had exceeded their authority when they purported to accept the amounts settling the plaintiffs' claim.

[2] Where a claim for personal injuries arising from a motor accident has not been brought to Court, a purported compromise to settle the claim out of Court arrived at by the solicitors for the injured party and an insurance company shall not be binding if no express and specific authority has been given by the injured person to the solicitors to do so. Such authority is specific only if the solicitors for the injured party have obtained the same at the stage when a definite sum is offered by the insurance company and the injured assents thereto as full settlement of his claim.

[3] A settlement is also binding on the injured if, notwithstanding that the injured's assent has not been obtained previously, the injured ultimately ratifies the terms reached by accepting the sum offered and executing the discharge voucher discharging all parties of their liability, actual or potential.

[4] The plaintiffs' refusal to accept the cheques and to sign the discharge vouchers is evident that they refused to ratify the steps taken by the solicitors.

[5] In the circumstances, there was no binding contract of settlement arrived at between the plaintiffs and the Insurance company which would act as an estoppel for the plaintiffs to bring this action.

[6] It is desirable, in the interests of public policy, that the practice as set out in this Judgment be adhered to for the purpose of achieving supreme requirements of justice.

For the plaintiffs - V. Arunachalam
For the defendants - Ho Thian Cheh

(Digest Form Only)

Also found at [1982] CLJ 361